

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

TYRON MARK HOLMES,	:	
	:	
Petitioner	:	
	:	
VS.	:	
	:	NO. 5:07-cv-269 (HL)
STEPHEN ROBERTS,	:	
	:	
Respondent	:	<u>ORDER</u>

Before the Court is petitioner **TYRON MARK HOLMES'S** notice of appeal (Tab # 24) from the Court's September 26, 2008 order, which adopted Magistrate Judge Claude W. Hicks's recommendation that petitioner's 28 U.S.C. § 2254 motion be denied as untimely.

The Eleventh Circuit Court of Appeals has mandated that the Court construe petitioner's notice of appeal as an application for a certificate of appealability ("COA") pursuant to 28 U.S.C. § 2253(c). *Edwards v. United States*, 114 F.3d 1083 (11th Cir. 1997). Under section 2253(c), a COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right. For the reasons stated in Magistrate Judge Hicks's recommendation and this Court's order accepting the same, the Court finds that petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Accordingly, the application for a COA is **DENIED**.

Also before the Court is petitioner's motion for leave to proceed *in forma pauperis* on appeal (Tab # 26). Said motion is **DENIED AS MOOT**.

SO ORDERED, this 1st day of December, 2008.

s/ *Hugh Lawson*
HUGH LAWSON
UNITED STATES DISTRICT JUDGE

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